IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.5486 OF 2005

Nandkumar Tukaram Kokate : Petitioner

V/s.

The State of Maharashtra & Ors. : Respondents

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Mr.P.M.Pradhan with Mr.V.S.Kapse for the petitioner.

Mr.A.H.Palekar, Asstt. Govt. Pleader, for the respondents.

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CORAM : S.A. BOBDE, J.

August 23, 2005.

P.C.:

1. Leave to delete the respondent no.4. Amendment to be carried out forthwith.

2. The petitioner, who is carrying on business in the premises of Esplanade Court, has challenged the order dated 14.6.2005 passed by the Principal Judge, Bombay City Civil Court, rejecting his application for stay, while admitting his appeal under the Bombay Government Premises (Eviction) Act, 1955.

3. The petitioner’s father was carrying on business in a shop admeasuring 52 sq. ft. in the compound of Esplanade

Court building at Cruick Shank Road owned by the Government on a monthly rent of Rs.23/- under a Rent Note dated 22.9.1964. Upon his father's demise, another Rent Note was executed in favour of the petitioner in pursuance of the earlier permission dated 1.6.1979 granted by the learned Chief Metropolitan Magistrate. This Rent Note covered a period of 30 years from the date of its execution. However, the petitioner himself entered into agreement on 22.9.1998 with the Chief Metropolitan Magistrate for licence to run the shop. Clause 11 of that agreement reads as follows:-

> "11. The terms of licence is for a period upto 31st Dec. 98. The C.M.M. Bombay may in his discretion renew the same. The C.M.M. Bombay shall in his sole discretion have the power to revoke the same before expiry of the said term."

It is in pursuance of that clause that proceedings were initiated under the Bombay Government Premises (Eviction) Act, 1955. The competent officer directed the petitioner's eviction. Against that, the petitioner has preferred an appeal being Misc. Appeal Stamp no.50 of 2005 before the City Civil Court. The learned City Civil Court has, however, rejected the application principally

on the ground that the request made by the petitioner is now limited by clause 11 of the licence agreement dated 25.9.1998.

4. Mr.Pradhan, the learned counsel for the petitioner, also relied on the show cause notice dated 13.5.2002 by which the petitioner's request for transfer of the licence from his father's name to his name was rejected on the ground that his father had expired. This is a matter which may be gone into at the time of the decision of the appeal. The appeal shall be decided without being influenced by any observations made by the interim order rejecting the stay application or this order.

5. In these circumstances and in particular the fact that the power has been exercised by the Chief Metropolitan Magistrate under clause 11 of the licence, I see no infirmity, jurisdictional or otherwise in the order of the learned Principal Judge. The learned counsel for the petitioner declined to accept any time, for vacating the premises, offered by this Court on the ground that the petitioner wishes to pursue his appeal. Having regard to the circumstances of the case, I see no reason to interfere.

6. Accordingly, the petition is dismissed.

Sd/-

S.A. BOBDE, J.